

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-6737

CLIFFORD LEE GAMEL,

Plaintiff - Appellant,

versus

FEDERAL BUREAU OF PRISONS; KATHY HAWKS, Director; SAM SAMPLES, Regional Director; KENNETH P. MORITSUGU, Regional Health Services Director; ED GAWRYSIAK, Assistant Regional Director; JOHN FANELLO, Warden; ROLAND WILLIAMS, Health Services Administrator,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Beaufort. David C. Norton, District Judge. (CA-95-1520-9-18-JC)

Submitted: November 21, 1996

Decided: December 3, 1996

Before HALL, WILKINS, and HAMILTON, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Clifford Lee Gamel, Appellant Pro Se. Barbara Murcier Bowens, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Appellant appeals from the district court's order dismissing without prejudice his civil action filed pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346-2680 (1994), or Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics, 403 U.S. 388 (1971). The district court's dismissal without prejudice is not appealable. See Domino Sugar Corp. v. Sugar Workers' Local Union 392, 10 F.3d 1064, 1066-67 (4th Cir. 1993). A dismissal without prejudice could be final if "no amendment [to the complaint] could cure defects in the plaintiff's case." Id. at 1067. In ascertaining whether a dismissal without prejudice is reviewable in this court, the court must determine "whether the plaintiff could save his action by merely amending the complaint." Id. at 1066-67.

Because Appellant could have filed an amended complaint raising only claims for monetary relief under Bivens, and thereby cured the defects, the dismissal order is not appealable. Accordingly, we dismiss the appeal for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED